

standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Utah retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

(c) Utah is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

[50 FR 28780, July 16, 1985, as amended at 62 FR 2560, Jan. 17, 1997; 65 FR 36620, June 9, 2000]

§ 1952.115 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval of the Utah plan under section 18(e) of the Act, effective July 16, 1985, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Utah plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections 5(a)(2) and (9) of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section

18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Utah plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health enforcement in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification), as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in §1952.114(b). Federal jurisdiction is also retained with regard to: all employment on the Hill Air Force Base; Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations. In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by

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the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Utah State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resumption of Federal enforcement and/or proceedings for withdrawal of plan approval.

[50 FR 28780, July 16, 1985, as amended at 62 FR 2560, Jan. 17, 1997; 65 FR 36620, June 9, 2000]

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§ 1952.116 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1999 Broadway Suite 1690, Denver, Colorado 80202-5716; and

Office of the Commissioner, Labor Commission of Utah, 160 East 300 South, 3rd Floor, P.O. Box 146650, Salt Lake City, Utah 84114-6650.

[65 FR 36620, June 9, 2000]

§ 1952.117 Changes to approved plans.

In accordance with part 1953 of this chapter, the following Utah plan changes were approved by the Assistant Secretary:

(a) *Legislation.* (1) The State submitted an amendment to the Utah Administrative Rulemaking Act (chapter 46a, title 63, Utah Code Annotated 1953), which became effective on April 29, 1985, which provides for rulemaking procedures similar to those of Federal OSHA in sections pertaining to expansion of definitions; availability of proposed rule to the public; a set time period allowed for public comment; the time period provided for a requested hearing to be held; and, provisions for determining the validity or applicability of a rule in an action for declaratory judgment. The Assistant Secretary approved the amendment on October 24, 1988.

(2) The State submitted amendments to its Occupational Safety and Health Act (chapter 69, Utah Code Annotated 1953), which became effective on April 29, 1985, which provide for seeking administrative warrants, clarify review procedures for the hearing examiner, provide for issuing a permanent standard no later than 120 days after publication of an emergency standard, and remove inconsistent requirements for adopting rules and regulations. The Assistant Secretary approved the amendments on October 24, 1988.